

HONORABLE JAMES L. ROBART

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VIVENDI S.A. and VIVENDI HOLDING I CORP. )

Plaintiffs, )

v. )

T-MOBILE USA, INC., T-MOBILE  
DEUTSCHLAND GMBH, T-MOBILE  
INTERNATIONAL AG, DEUTSCHE TELEKOM  
AG, AND ZYGMUNT SOLORZ-ZAK, )

Defendants. )

NO. CV6-1524 JLR

DECLARATION OF GEORGE E.  
BUSHNELL III

I, GEORGE E. BUSHNELL III, hereby declare as follows:

I, George E. Bushnell III, depose and say upon my own personal knowledge as follows:

1. I am President of Vivendi Holding I Corp. ("VH1"). VH1 is a U.S. corporation organized and existing under the laws of the State of Delaware.

2. On June 1, 2007, VH1 brought suit in Miami against the Trustee for negligently withdrawing its bankruptcy petition and aiding and abetting Elektrim's fraud with respect to the PTC shares. VH1 also sued Elektrim for fraud. The complaint was amended on June 7, 2007. A copy of the amended complaint is attached as Exhibit A.

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1           3.       On June 8, 2007, at the request of the Trustee and Elektrim the English court, in  
2 an ex parte proceeding, issued an "anti-suit injunction" enjoining VH1 from pursuing its Miami  
3 action. The English court extended that injunction in a decision issued on October 12, 2007.

4           4.       The English court reasoned that the Miami suit against the Trustee was  
5 "vexatious" because it was a "collateral attack" on a decision that the same English court had  
6 issued in an earlier proceeding between the Trustee and two Elektrim bondholders seeking the  
7 English court's direction as to whether the Trustee could pay out funds that it had received from  
8 Elektrim. In that earlier proceeding the English court had ruled that the funds were not subject  
9 to any proprietary claim from Vivendi SA and that the Trustee could distribute them. The English  
10 court further stated that VH1 was subject to a "representation order" in that first proceeding and  
11 thus was bound by the actions of the two bondholders even though VH1 was not a party to that  
12 action. The English court then concluded that VH1's claims should have been raised in the earlier  
13 proceeding. A copy of the English decision is attached as Exhibit B. VH1 intends to appeal that  
14 decision.  
15

16           5.       In its October 12, 2007 decision, the English court also held that the Trustee's  
17 conduct could not be challenged as long as the Trustee was acting at the direction of 30% of the  
18 bondholders. The English court further held that the Trustee had no "duty to give advice (either  
19 legal or commercial) to the bondholders" of the risks associated with accepting any proceeds of  
20 the sale of PTC shares and with the withdrawal of the bankruptcy petition.  
21

22           6.       In its October 12, 2007 decision, the English Court further held that the Trustee  
23 had acted in accordance with the governing Trust Deed when it agreed to withdraw its  
24  
25

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1 bankruptcy petition against Elektrim because it was acting at the direction of 30% of the  
2 bondholders.

3       7. The English Court further held that VH1 could not pursue an action for fraud  
4 against Elektrim because the Trust Deed provided that only the Trustee "shall be entitled to  
5 proceed directly against [Elektrim Finance] or [Elektrim] to enforce the performance of any of the  
6 provisions of these present unless the Trustee having become bound as aforesaid [by direction of  
7 30% of the bondholders] to make proceedings fails to do so within a reasonable time and such  
8 failure is continuing." According to the English Court, VH1 "must trust the trustee" even though  
9 VH1 had initially alleged that the Trustee aided and abetted Elektrim's fraud.  
10

11       8. On October 12, 2007, the English Court denied VH1's application for permission  
12 to appeal the court's decision.  
13

14       9. On November 2, 2007, VH1 applied to the Court of Appeal for permission to  
15 appeal.

16       10. If ultimately granted permission to appeal, VH1's appeal will argue that the English  
17 lower court misapplied the "vexatious or oppressive" standard under English law that is  
18 necessary to justify an anti-suit injunction and instead improperly reached a decision on the merits  
19 without holding an evidentiary hearing to resolve factual disputes.  
20

21       11. On June 29, 2007, Elektrim asked the English Court to enjoin VH1 from pursuing  
22 this case. The English Court declined to do so. See Exhibit C.

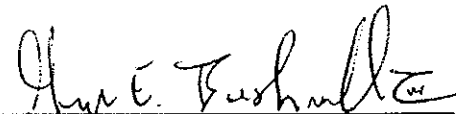
23       12. Among the documents that VH1 received upon the assignment of GM's claims is a  
24 June 21, 2006 memorandum from the bondholders' attorney to "certain holders of Elektrim  
25

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1 bonds" including GM (through Everest) opining that "[i]f the Call Option was validly exercised  
2 and the PTC Shares transferred to DT prior to the date on which bankruptcy was declared, the  
3 PTC Shares will not form part of the bankruptcy estate." A copy of that document is attached as  
4 Exhibit D.

5  
6  
7 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United  
8 States of America that the foregoing is true and correct.

9 Executed on November 21, 2007.

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13 George E. Bushnell III

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